

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

GILBERT P. HYATT,  
7335 Tara Avenue  
Las Vegas, NV 89117

Plaintiff,

v.

UNITED STATES PATENT AND  
TRADEMARK OFFICE,  
600 Dulany Street  
Alexandria, VA 22314

Defendant.

Case No. 18-cv-2800

**COMPLAINT**

1. This is an action under the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552, challenging the decisions by the Defendant United States Patent and Trademark Office (“PTO”) not to grant Plaintiff Gilbert P. Hyatt (“Mr. Hyatt”) a waiver of fees for a FOIA request that he intends to use to ascertain and educate the public about agency misconduct and to incorrectly categorize Mr. Hyatt as a commercial user of the requested documents.

**Jurisdiction and Venue**

2. This Court has jurisdiction pursuant to 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. § 1331.

3. Venue is proper in this district pursuant to 5 U.S.C. § 552(a)(4)(B).

**Parties**

4. Plaintiff Gilbert P. Hyatt is an engineer, scientist, and inventor who has obtained more than 70 patents and has numerous patent applications pending before the PTO.

5. Defendant U.S. Patent and Trademark Office is a federal agency within the meaning of 5 U.S.C. § 552.

### **Legal Background**

6. The Freedom of Information Act (“FOIA”) mandates that federal agencies make certain agency records promptly available to any person upon request. 5 U.S.C. § 5552(a)(3)(A). FOIA mandates that agencies promulgate regulations establishing fee schedules applicable to the processing of such requests. 5 U.S.C. § 5552(a)(4)(A)(i). The PTO has codified its fee schedule regulations at 37 C.F.R. § 102.1–11.

7. In relevant part, there are three categories of requestors under FOIA, and the agency’s categorization of the use to which the request will be put determines which fee schedule applies. 5 U.S.C. § 552(a)(4)(A)(ii). Commercial use requestors must pay “reasonable standard charges for search, duplication, and review.” *Id.* § 552(a)(4)(A)(ii)(I). Educational or media use requestors are liable for “reasonable standard charges” only for “duplication.” 5 U.S.C. § 552(a)(4)(A)(ii)(II). All “other” requestors are liable for “reasonable standard charges” for only “search and duplication.” 5 U.S.C. § 552(a)(4)(A)(ii)(III).

8. Agency determinations regarding FOIA fee category determinations are reviewed de novo. *Elec. Privacy Info. Ctr. v. Dep’t of Def.*, 241 F. Supp. 2d 5, 9 (D.D.C. 2003).

9. Notwithstanding the category of requestor, if “disclosure is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government” and is “not primarily in the commercial interest of the requester,” the “[d]ocuments shall be furnished without any charge or at a [reduced charge].” 5 U.S.C. § 552(a)(4)(A)(iii).

10. Agency determinations regarding FOIA fee waivers are reviewed de novo. 5 U.S.C. § 552(a)(4)(A)(vii).

### **Facts**

11. Mr. Hyatt is an accomplished inventor, with nearly 75 patents issued by the PTO. Some of his patents cover computer memory architecture, incremental processing, illumination devices, display devices, graphics systems, and sound and speech processing.

12. Mr. Hyatt is also the owner and inventor of nearly 300 patent applications currently pending before the PTO, as well as more than 90 applications that the PTO has abandoned. Most of Mr. Hyatt's applications have been pending for over 20 years, with about a dozen pending for over 35 years and three applications pending for over 40 years.

13. The PTO has dedicated Art Unit 2615, which is also known as the Hyatt Unit, to examine Mr. Hyatt's patent applications. The Hyatt Unit employed 20 percent of the GS-15 examiners in the entire Patent and Trademark Office at the time the Hyatt Unit was established in October 2012. The Supervisor of the Hyatt Unit has offered sworn testimony that since October 2012, the PTO has spent about \$10 million in examiner's salaries alone in examining Mr. Hyatt's applications.

14. Mr. Hyatt, his patent applications, and the prosecution of those patent applications is a matter of public interest. The intellectual property trade press and even such national publications as *USA Today* have published articles about Mr. Hyatt, his applications, and the legal disputes between him and the Office related to those applications. These articles themselves often attract public interest. PTO management is aware of the public attention that Mr. Hyatt and his patent applications have engendered and circulate press clippings about Mr. Hyatt internally. The PTO has represented to federal courts that Mr. Hyatt's patent applications and their prosecution are matters of public interest and has updated Congress on the purported progress that the Office has made examining Mr. Hyatt's patent applications.

15. Mr. Hyatt has been involved in a number of legal actions against the PTO related to his patent applications. As a result of those actions and communications that Mr. Hyatt has had with PTO personnel, Mr. Hyatt has come to believe that the PTO made a decision in the 1990s to cease issuing him patents to which he is entitled and has treated his applications in a bad faith manner since that time, including the PTO's withdrawal from issuance of four of his allowed patent applications and admitted stalling on examining his applications for nearly a decade.

16. In order to understand better how the PTO has treated him and his patent applications, and to educate the public about the PTO's unlawful treatment of Mr. Hyatt and his patent applications, Mr. Hyatt determined to seek certain agency records from PTO under the FOIA.

17. Mr. Hyatt has made concrete plans to disseminate the documents he obtained through FOIA in three ways. First, Mr. Hyatt intends to have produced documents posted on the website of the American Center for Equitable Treatment ("ACET"), a Section 501(c)(3) non-profit charitable organization of which he is a member. ACET is dedicated to educating Americans about the economic and social benefits of the federal government's fair, efficient, and effective administration of technology, innovation, and intellectual property laws and policies. It maintains a website in furtherance of this mission at <http://acet-usa.org>.

18. Second, Mr. Hyatt has built a website at <http://www.ptomisconduct.com> and has populated that site with materials related to the PTO's misconduct.

19. Third, Mr. Hyatt intends to share produced documents with national media, which have reported extensively on his inventive activities, patent applications, and disputes with the PTO.

20. On February 12, 2018, Mr. Hyatt filed a FOIA request seeking agency records relating to Mr. Hyatt or his patent applications. Ex. A.

21. That same day, the PTO acknowledged its receipt of the request and assigned it request number F-18-00014. Ex. B.

22. Following receipt of the FOIA Request, the PTO contacted Mr. Hyatt's counsel regarding the scope of the request and the Parties agreed that the PTO would provide Mr. Hyatt a fee estimate for the first individual request in the FOIA Request:

All records from Art Unit 2615 concerning Mr. Hyatt or his patent applications, excluding records contained in the file histories of Mr. Hyatt's patent applications and excluding records already produced to Mr. Hyatt in litigation. This request includes without limitation all responsive records from any

instant messaging, text messaging, or similar communications system used, with or without PTO authorization, by Art Unit 2615 personnel. This request seeks responsive records created or obtained from January 1, 2012, to the present.

23. On March 13, 2018, the PTO sent Mr. Hyatt a partial fee estimate of \$3,029,782. Ex. C. The PTO also designated Mr. Hyatt's request as a commercial use request. *Id.* The PTO acknowledged that its partial fee estimate was unusually high and invited Mr. Hyatt to further narrow the scope of the request. *Id.*

24. Given that the PTO's partial fee estimate of \$3,029,782 made little sense—it amounted to nearly 16 person-years of GS-15 Step 11 employees working full time on this single document request—Mr. Hyatt's engaged in further discussions with the PTO regarding the basis of its calculation. Ex. D.

25. On April 17, 2018, the PTO provided Mr. Hyatt with additional information concerning its partial fee estimate. Ex. E. The PTO stated that its initial count of available emails yielded 1 million pages of emails and 48 million pages of attachments that would be responsive to the request. *Id.* The PTO stated that its partial fee estimate of \$3,029,782 was comprised of \$3,435 in search costs, \$918,187 in review fees for emails, and \$2,108,160 in review fees for attachments to emails. *Id.* Finally, the PTO requested that Mr. Hyatt either proceed with payment or limit the scope of his request. *Id.*

26. On April 27, 2018, Mr. Hyatt narrowed his request to encompass two categories of records:

All records concerning Mr. Hyatt or his patent applications created by, sent by, or received by (a) Diego Gutierrez during 2012 and 2013 or (b) Gregory Morse from and including 2013 through 2018, excluding (1) email attachments, (2) documents contained in the file histories of Mr. Hyatt's applications, and (3) drafts of documents contained in the file histories of Mr. Hyatt's applications; and

Copies of all Performance Appraisal Plans for, and signed by, Examiner Walter Briney for fiscal years 2013, 2014, 2015, 2016, 2017, and 2018.

Ex. F. Mr. Hyatt's narrowed FOIA request is referred to in this Complaint as "the FOIA Request."

27. In his April 27 letter, Mr. Hyatt also requested that the PTO grant him a fee waiver pursuant to 5 U.S.C. § 552(a)(4)(A)(iii) for the FOIA Request. *Id.* Mr. Hyatt explained that disclosure of the requested information was in the public interest because it was likely to contribute significantly to the public understanding of the operations or activities of the PTO because it would allow Mr. Hyatt to inform the public about the extent and details of the PTO's violation of his constitutional and statutory rights in the course of their examination of his applications. *Id.* Alternatively, Mr. Hyatt requested that the PTO determine that he was not a "commercial user" of the requested documents. *Id.* In support of his requests, he attached declarations from Mr. Hyatt and supporting exhibits. Ex. F.

28. On May 25, 2018, the PTO denied Mr. Hyatt's request for a fee waiver for the FOIA Request and denied his request that he be determined not to be a commercial user of the requested documents. Ex. G. The PTO also provided a final fee estimate to Mr. Hyatt of \$131,019 for the FOIA Request. *Id.*

29. On July 9, 2018, Mr. Hyatt timely filed an administrative appeal of the PTO's denial of his fee waiver request and his request that he be determined not to be a commercial user of the requested documents. Ex. H. Mr. Hyatt included 14 exhibits to his administrative appeal. *Id.*

30. On July 10, 2018, the PTO acknowledged receipt of Mr. Hyatt's appeal and assigned it appeal number A-18-00011. Ex. I.

31. On August 7, 2018, the PTO denied Mr. Hyatt's administrative appeal. Ex. J. The PTO's letter denying the appeal states that it "is the final decision of the United States Patent and Trademark Office with respect to [Mr. Hyatt's] appeal" and that Mr. Hyatt has

“the right to seek judicial review...in the United States District Court for the District of Columbia.” *Id.* at 10.

**Count 1: Fee Waiver**

32. The above paragraphs are hereby incorporated by reference as if set forth fully herein.

33. Mr. Hyatt has satisfied the criteria for a fee waiver set forth at 5 U.S.C. § 552(a)(4)(A)(iii) for the FOIA Request because “[d]isclosure of the [requested] information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester.”

34. The PTO’s determination that Mr. Hyatt is not entitled to a fee waiver for the FOIA Request is erroneous.

35. The PTO’s determination that Mr. Hyatt is not entitled to a fee waiver for the FOIA Request injures Mr. Hyatt and would be redressed by the relief requested in this Complaint.

36. Mr. Hyatt has exhausted the applicable administrative remedies with respect to the fee waiver request.

**Count 2: Commercial Use Determination**

37. The above paragraphs are hereby incorporated by reference as if set forth fully herein.

38. Mr. Hyatt has not requested the records sought by the FOIA Request for commercial use within the meaning of 5 U.S.C. § 552(a)(4)(A)(ii)(I).

39. The PTO’s determination that Mr. Hyatt is to be treated as a commercial user of the agency records requested by the FOIA request is erroneous.

40. The PTO’s determination that Mr. Hyatt is to be treated as a commercial user of the agency records requested by the FOIA request injures Mr. Hyatt and would be redressed by the relief requested in this Complaint.

41. Mr. Hyatt has exhausted the applicable administrative remedies with respect to the PTO's determination that Mr. Hyatt is to be treated as a commercial user of the agency records requested by the FOIA.

**Requested Relief**

Plaintiff Gilbert P. Hyatt respectfully requests that this Court:

- A. Determine that Mr. Hyatt is entitled to a fee waiver in conjunction with the FOIA request such that the PTO must furnish without any charge all responsive documents;
- B. Determine that Mr. Hyatt is not a commercial user of the agency records requested by the FOIA request;
- C. Award Mr. Hyatt his costs and reasonable attorneys' fees incurred in this action pursuant to 5 U.S.C. § 552(a)(4)(E);
- D. Grant such other relief as the Court may deem just and proper.

Dated: November 30, 2018

Respectfully submitted,

/s/ Mark W. DeLaquil  
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**Certificate of Service**

I hereby certify that, on November 30, 2018, I served a copy of the foregoing and all exhibits on Defendants via Registered Mail at the following address:

Office of the General Counsel  
United States Patent and Trademark Office  
P.O. Box 1450 Alexandria, VA 22313-1450

Dated: November 30, 2018

Respectfully submitted,

/s/ Mark W. DeLaquil

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